

ESTTA Tracking number: **ESTTA28024**

Filing date: **03/11/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91160266
<b>Party</b>	Plaintiff Mr. Christopher Brooks Mr. Christopher Brooks 83 Myrtle Boulevard Larchmont, NY 10538 UNITED STATES
<b>Correspondence Address</b>	Evan Gourvitz Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES egourvitz@frosszelnick.com
<b>Submission</b>	Opposition/Response to Motion
<b>Filer's Name</b>	Evan Gourvitz, Esq.
<b>Filer's e-mail</b>	egourvitz@fzlz.com
<b>Signature</b>	/s/ Evan Gourvitz/
<b>Date</b>	03/11/2005
<b>Attachments</b>	Declaration of Evan Gourvitz in Opp to Applicants Motion to Suspend.pdf ( 5 pages )

In the Matter of Application Serial No. 75/761,159  
Mark: CAB CALLOWAY  
Opposer's Ref: CWBK 04/18950

Opposition No. 91/160,266

1. I am an associate at the law firm of Fross Zelnick Lehrman & Zissu, P.C., counsel for Opposer Christopher Brooks in this action. I submit this declaration on the basis of personal knowledge in opposition to Applicant's motion to suspend its application and this opposition.
2. In the hopes of avoiding the need to move for summary judgment, on behalf of Opposer I submitted a detailed settlement proposal to Applicant's counsel on November 4, 2004, well in advance of Opposer's January 8, 2005 deadline for filing such a motion. Despite my follow-up emails, and assurances by Applicant's counsel Mark Karlin on November 5, November 9, November 10, and November 29, 2004 that Applicant would promptly respond to this proposal, he did not do so by the end of December. Accordingly, on December 30, 2004 Opposer filed its motion for summary judgment.

3. On January 13, 2005, Applicant finally responded to the settlement proposal. I sent a detailed counterproposal on January 24, 2005. The parties have had some discussions regarding settlement since that time, but there are no ongoing settlement discussions.
4. Applicant's response to Opposer's motion for summary judgment originally was due February 3, 2005. On January 27, 2005, Applicant's counsel Kathryn Diaz of the firm Kelley Drye and Warren LLP called me to seek an extension of time to respond to this motion. The next day I told her that our client would not be willing to agree to an extension unless we were finalizing a settlement agreement on the terms set forth in my January 24, 2005 settlement letter.
5. On February 1, 2005, Applicant's counsel Marc Karlin sent me an email request for an extension of time to respond to Opposer's summary judgment motion "pending further settlement discussions," citing "compelling reasons arising from serious health issues with several of [his] client's members."
6. On February 2, 2005, I responded, expressing my sympathy for his client's health, but noting that we did not believe settlement discussions provided a basis for an extension, given Applicant's delays in substantively responding to our settlement proposals. Nevertheless, because of the health issues raised by Applicant, our client granted a 10-day extension of time, and Applicant's counsel filed a consented motion to this effect on February 3.
7. On that same day, February 3, 2005, Applicant's counsel sought a further extension of time, claiming it was required because of his client's health issues and the schedule of Applicant's co-counsel Kathryn Diaz. In an email response I noted that Applicant already had had more than a month to respond to Opposer's motion, even without the extension we had granted, and that given the familiarity of Applicant's counsel Marc Karlin with the facts of the matter (since he served as trial counsel in the previous dispute between the parties) he should

need little or no input from his client to prepare a response. Nevertheless, I responded that I was willing to discuss a further extension with Applicant's co-counsel Ms. Diaz.


8. In a conversation the next day, Ms. Diaz said that Opposer's members Zulme Calloway and Chris Calloway were ill. Ms. Diaz also advised that she would be traveling for all of the next week. Accordingly, on February 7, 2005 I informed Applicant's counsel by email that Opposer agreed to a further extension of time until February 22, 2005 to respond to Opposer's motion. In that email, I noted that "[t]his extension – in addition to the 10-day extension we previously granted, and the 35 days you originally had to respond to our motion – should be more than enough time to accommodate your client's health issues and [Ms. Diaz's] schedule, and to further discuss settlement. You should plan accordingly." Opposer filed for the extension that day.

9. On February 24, 2005, having received nothing from Applicant's counsel, I called Ms. Diaz to enquire about the status of Applicant's response to Opposer's summary judgment motion. Ms. Diaz informed me that her firm no longer was representing Applicant, and that I should contact Applicant's counsel Mr. Karlin in the future. Thereafter, I received Applicant's current motion to suspend, which apparently had been filed on February 22, 2005 – the date Applicant's response to Opposer's motion had been due. Applicant had not informed me that it intended to file this motion, nor did it seek Opposer's consent to file this motion before doing so.

10. In a letter dated March 8, 2005, Applicant's counsel Marc Karlin stated that Chris Calloway, who Applicant's counsel previously said was ill, would like to meet with our client between March 14-18 or March 21-25 in New York.

I declare under penalty of perjury that the foregoing is true.

Executed this 11th day of March, 2005

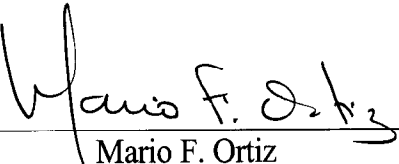
A handwritten signature in black ink, appearing to read 'Evan Gourvitz', written over a horizontal line.

Evan Gourvitz

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the DECLARATION OF EVAN GOURVITZ IN OPPOSITION TO APPLICANT'S MOTION TO SUSPEND, and MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO SUSPEND, was served via first class mail, to Marc A. Karlin, Esq., Karlin & Karlin, A.P.L.C., 3701 Wilshire Blvd. Suite 1035, Los Angeles, CA 90010 Associate Attorneys for Applicant Creative Arts by Calloway, LLC, on this 11<sup>th</sup> day of March 2005.

  
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Mario F. Ortiz